



July 20, 2017

HAND DELIVERED

Paul Igasaki
Chair, Administrative Review Board
200 Constitution Ave, N.W.
Room S-5220
Washington, D.C. 20210

Re: OFCCP v. Google, Inc.,
ARB Case No.
ALJ Case No. 2017-0FC-00004

Dear Chairman Igasaki:

Enclosed for filing is Plaintiff's Motion for Clarification as to Whether this Case Remains Under Expedited Proceedings. Copies of this document will be served on counsel for defendant by first class mail.

Sincerely,

Beverly Dankowitz
Associate Solicitor
Civil Rights and Labor-Management Division

Attachments

cc: Lisa Barnett Sween, Esq.
Matthew Camardella, Esq.
Daniel Duff, Esq.

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OFFICE OF THE CLERK
THE APPELLATE BOARD
U.S. DEPT. OF LABOR



UNITED STATES DEPARTMENT OF LABOR
ADMINISTRATIVE REVIEW BOARD

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

ARB Case No. _____

ALJ Case No. 2017-OFC-00004

2017 JUL 20 A.D.C.

OFFICE OF THE
ADMINISTRATIVE
REVIEW BOARD
U.S. DEPARTMENT OF
LABOR

PLAINTIFF'S MOTION FOR CLARIFICATION AS
TO WHETHER THIS CASE REMAINS UNDER EXPEDITED PROCEEDINGS

Plaintiff, Office of Federal Contract Compliance Programs (Plaintiff or OFCCP), through its undersigned attorneys, requests clarification regarding whether this case remains in expedited proceedings, and, specifically, the deadline that applies to the filing of exceptions in the above-captioned case. In support of its request, Plaintiff states the following:

1. On January 4, 2017, Plaintiff filed an administrative complaint with the Office of Administrative Law Judges alleging that defendant Google, Inc., violated Executive Order 11246, as amended, when it failed to provide several categories of documents and information that OFCCP requested during a compliance review initiated pursuant to the Executive Order's implementing regulations at 41 CFR 60-1.20.

2. On February 21, 2017, ALJ Berlin granted Plaintiff's motion to litigate this case under the expedited hearing procedures set out in the Executive Order regulations at 41 CFR 60-30.31 – 30.37. The expedited hearing procedures may be invoked by OFCCP in cases such as this one in which the contractor has declined to provide access to records or other information.

3. These expedited hearing procedures contain specific time frames for certain aspects of the litigation, including the issuance of the ALJ's recommended decision and order.

4. The ALJ noticed the hearing for March 10, 2017, but rescheduled it for April 7 after the parties jointly requested a continuance.

5. The hearing began on April 7 as scheduled. The ALJ adjourned the hearing to allow Google time to file a motion to dismiss, which the ALJ denied on May 2. The hearing resumed and concluded on May 26, 2017.

6. Pursuant to the expedited hearing regulations at 41 CFR 60-30.35, the ALJ was required to issue the recommended decision and order within 15 days after the hearing concluded, on June 12, 2017.

7. The ALJ did not issue the recommended decision and order until July 14, 2017, over one month past the expedited hearing deadline.

8. Under the expedited hearing regulations, exceptions must be filed with 10 days after receipt of the recommended decision. 41 CFR 60-30.36. Under the regular hearing procedures applicable to non-expedited cases, exceptions must be filed within 14 days after receipt of the recommended decision. 41 CFR 60-30.28.

9. The body of the ALJ's recommended decision, attached hereto, reflects that the ALJ no longer considered the case to be conducted under the expedited hearing procedures. In footnote 16, page 3, of the recommended decision, the ALJ stated:

After the hearing, the parties requested that I allow them to file simultaneous briefs on the merits after the transcript became available. The regulations for expedited hearings are to the contrary, *see* 41 C.F.R. § 60-30.35, *but by this point, in my view, the case was no longer on an expedited schedule.* I therefore

allowed the parties the time they requested, and both submitted closing briefs. (Emphasis added.)¹

10. The Notice of Appeal Rights attached to the end of the decision, however, states that “to appeal, you must file exceptions (“Exceptions”) with the Administrative Review Board (“Board”) within ten (10) days of the date of receipt of the administrative law judge’s recommended decision.”

11. Plaintiff assumes that inclusion of the Notice of Appeal Rights that contains the expedited 10-day, rather than the regular 14-day, filing period was an oversight given the ALJ’s clear statement in footnote 16 that the case was no longer on an expedited schedule, and the fact that the ALJ issued the decision well beyond the period of time prescribed by the regulations for matters in expedited proceedings. These inconsistent statements, though, have created the ambiguity for which plaintiff now seeks clarification.

12. Counsel for plaintiff has consulted with counsel for defendant, who advised that they consider the case to be under the expedited hearing procedures.

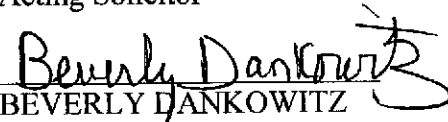
13. In the event that the ARB finds that the expedited deadlines no longer apply to this case, Plaintiff requests an extension of 14 days, to August 11, 2017, to file any Exceptions to the ALJ’s Recommended Decision. At the trial proceedings before ALJ Berlin, Plaintiff was represented by trial counsel from the Office of the Regional Solicitor in San Francisco. The Civil Rights and Labor-Management Division of the Office of the Solicitor in Washington, D.C., has responsibility for all OFCCP matters pending before the ARB. As appeals counsel before this Board in this matter, the undersigned has not had a full opportunity to complete the review of the full hearing record in light of the issues presented by the ALJ’s recommended decision.

¹ The expedited hearing regulations are silent as to the mechanism that the ALJ is to use to remove the case from expedited proceedings.

WHEREFORE, for the foregoing reasons, OFCCP counsel respectfully requests that the ARB clarify whether it considers the case to be under the expedited hearing procedures and thus whether exceptions to the ALJ's recommended decision must be filed within 10 or 14 days of the parties' receipt of that decision. OFCCP counsel further requests that, if the ARB finds that the case is no longer under expedited proceedings, the deadline for filing exceptions be extended until August 11, 2017.

Respectfully submitted,

NICHOLAS C. GEALE
Acting Solicitor


BEVERLY DANKOWITZ
Associate Solicitor

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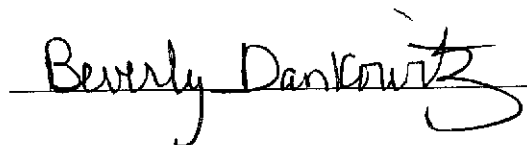
Counsel for Plaintiff OFCCP

CERTIFICATE OF SERVICE

I hereby certify that, on July 20, 2017, copies of the foregoing were served by first class mail, postage prepaid, upon the following persons:

Lisa Barnett Sween, Esq.
Matthew Camardella, Esq.
Daniel Duff, Esq.

Jackson Lewis P.C.
50 California Street, Floor 9
San Francisco, CA 94111

A handwritten signature in black ink, reading "Beverly Dankowitz". The signature is written in a cursive style with a large, stylized "Z" at the end.